

CERTIFIED FOR PARTIAL PUBLICATION

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

THE PEOPLE,

Plaintiff and Respondent,

v.

BRIAN ANTHONY MASON et al.,

Defendants and Appellants.

D035933

(Super. Ct. No. SCD145049)

ORDER MODIFYING OPINION
AND PARTIAL PUBLICATION
INSTRUCTION

[NO CHANGE IN JUDGMENT]

THE COURT:

The opinion in the above-entitled matter filed on January 15, 2002, was certified for publication with the exception of parts I through IV and VI through X of the discussion. For good cause it now appears that the opinion should be published in the Official Reports with the exception of parts I through IV and VII through X of the discussion and it is so ordered.

It is also ordered that the opinion be modified in the following particulars:

On page 1, the unnumbered footnote is deleted and replaced with the following sentence:

Pursuant to California Rules of Court, rules 976(b) and 976.1, this opinion is certified for publication with the exception of parts I through IV and VII through X of the discussion.

On page 2, after the first sentence which ends "that accompanied the murder," add the following sentence:

In the published portion of this opinion we also hold that the provisions of the Determinate Sentencing Act (DSA), section 1170 et seq., do not apply to the indeterminate 25-year-to-life gun use enhancement imposed under section 12022.53(d) in this case.

On page 32, after the first sentence in the second paragraph which ends "*indeterminate* sentences," add the following two sentences:

Further, these indeterminate enhancements cannot exist independently of the robbery and attempted robbery counts to which they were appended. (*People v. Lyons* (1999) 72 Cal.App.4th 1224, 1228-1229.) Thus, as the gun use enhancements of section 12022.53 are indeterminate sentences, the terms of section 1170.1 do not apply.

There is no change in the judgment.

NARES, Acting P. J.

Copies to: All parties